

**U.S. Department of Labor**

Office of Administrative Law Judges  
800 K Street, NW, Suite 400-N  
Washington, DC 20001-8002

(202) 693-7300  
(202) 693-7365 (FAX)



**Issue Date: 19 March 2003**

**Case No.: 2003-AIR-12**

**In the Matter of**

**Coleen L. Powers,  
Complainant**

**v.**

**Pinnacle Airlines, Inc.,  
Respondent**

**ORDER DENYING COMPLAINANT'S DISCOVERY MOTIONS**

On March 11, 2003, the Complainant filed her "Motion to Compel Proper Responses to Complainant's First Interrogatories," and "Motion to Compel Proper Responses to Complainant's First Request for Production of Documents."<sup>1</sup> On March 18, 2003, the respondent filed its "Answer to Complainant's Motions to Compel."

In her Motions, the Complainant alleges that the Respondents are "stonewalling" in discovery and engaging in "massive resistance," and complains that Northwest Airlines does not have counsel, and has not responded to her discovery requests. As I noted in my March 5, 2003 Order, Northwest Airlines is not a party in this proceeding, which would explain why they have not entered an appearance or responded to discovery requests.

With respect to her interrogatories, the Complainant identifies four questions for which the Respondent has "failed to provide any meaningful answers." These questions are as follows:

1. Please identify all persons with knowledge of discoverable evidence regarding each paragraph and subparagraph of the complaints and the nature of such knowledge.

---

<sup>1</sup> In my Order issued on March 5, 2003, I advised the Claimant that the Court would not accept any further pleadings that listed any party other than Pinnacle as the Respondent. As it is possible that the instant motions were mailed by the Complainant before receipt of this Order, I will consider them. The Complainant is reminded, however, that any future pleadings listing any respondent other than Pinnacle will not be considered by the Court.

2. Please identify all information held by Respondents regarding the concerns expressed by Ms. Powers, including but not limited to managers' statements about free speech rights (or the lack thereof) and any other statements, posters, notices, orders, instructions, or publications informing couriers of their right to speak (or lack of right to speak) their minds about safety, health and environmental matters pursuant to whistleblower laws and the First Amendment.
3. Please identify and produce all documents on every single DOL environmental whistleblower or other employment lawsuit brought against Respondents.
4. Please identify each and every requested document over which you assert any privilege or immunity, or which has been destroyed, stolen, altered, defaced or withheld for any reason.

The Complainant has not enlightened the Court as to how the Respondent has answered these four questions, or how those answers are deficient. According to the Respondent, however, it has responded in full to the first interrogatory, and has provided a privileged document log in response to the fourth interrogatory. However, the Respondent was unable to respond to the second interrogatory because it is vague and ambiguous, and Complainant's counsel has not clarified it. The Respondent did not respond to the third interrogatory, because it was not relevant, and it would be unduly burdensome to respond.

Nowhere in her five page Motion has the Complainant addressed the Respondent's responses, or indicated precisely why she thinks they are deficient. Rather, she made generalized statements about the discovery process, with supporting string citations, but did not specifically address the claimed inadequacy of the Respondent's responses. Indeed, some of her claims do not appear to belong in this case at all - she complained that she is entitled to sworn answers to her "contention interrogatories," when no such interrogatories have been served on Respondent, and she alleges that "Respondents deem themselves "more equal" than Ms. Powers, whom they have blacklisted and fired," when there is no claim by the Complainant that she was fired or blacklisted by the Respondent.

The Complainant complained that only one management agent signed all of the interrogatory responses, arguing that all managers who provided information for interrogatory responses must sign their discovery responses under oath. The cases cited by the Complainant do not support her claim, and the fact that the interrogatory responses were not signed under oath by every person who provided information does not make them deficient.

I agree with the Respondent, that the Complainant's second interrogatory is vague and ambiguous, and it is impossible to determine exactly what information it calls for. To the extent that it may call for information about environmental whistleblower matters or the First Amendment, it is not relevant, as this case involves a claim under the AIR 21 Act, in which the Complainant raised concerns about flight attendant duty hours.

With respect to the third interrogatory, I agree with the Respondent that the request is overly broad and not likely to lead to any relevant evidence. Again, this case deals with a claim brought by the Complainant under the AIR 21 statute, and documents from other whistleblower or other employment suits brought against the Respondent are not relevant to that claim.

With respect to the Complainant's document request, the Respondent stated that, after several discussions with counsel for the Complainant, the discovery request was narrowed to 26 specific categories of documents, and a box of documents responsive to the Complainant's document requests was sent by the Respondent to the office of a Memphis attorney on February 25, 2003 for Complainant's counsel's review. However, Complainant's counsel did not review these documents as agreed, but instead filed the instant Motions to Compel.<sup>2</sup> According to the Respondent, the Complainant herself finally reviewed the box of documents on March 13, 2003, and the documents that she identified are being copied and provided to her, along with additional documents located after the box was prepared for review. The Respondent also provided the Complainant with a privilege log, a copy of which it attached, specifically designating each document that it withheld on the grounds of attorney-client or work-product privilege. Thus, the Complainant's allegation that the Respondent has not provided "one single piece of paper" to the Complainant is demonstrably false.

Again, the Complainant has not identified the specific document requests that she claims the Respondents have not properly answered, nor has she identified the Respondent's objections and indicated why they were unfounded. Indeed, her Motion to Compel corroborates the Respondent's statement that, after discussions between counsel, the Complainant revised her document request to reflect the 26 categories of documents listed in the Complainant's Motion. The Complainant acknowledged that the Respondent had provided documents responsive to some categories, stated that it did not have documents responsive to other categories, and identified other categories in which the request for documents was not appropriate in light of the nature and scope of the case, as discussed between counsel.

Nevertheless, totally these discussions between counsel, the Complainant now moves to compel full answers to her original requests for production, as follows:

1. Please produce all documents bearing Ms. Powers' name, social security numbers or other identifiers or pertaining to her in any way.
2. Please produce all documents relating to every allegation in every paragraph of the Complaint, including all documents on NWA, Pinnacle, contractor and subcontractor facilities, injuries, fatalities, fines, lawsuits, enforcement actions, and other significant events.

---

<sup>2</sup> The Motions were signed on March 5, 2003, and telefaxed to the Court on the same date. As I have not indicated that the parties may effect service by telefax, the date of filing of the Motions is March 11, 2003, when the copy sent by mail was received in this office.

3. Please provide all court, FAA and administrative agency orders, penalties, findings, citations, filings, pleadings, transcripts, judgments, briefs, settlements and exhibits regarding any cases in which any Defendant has ever been sued by or sued any person, including but not limited to citizens, newspapers, present or former employee or contractor for libel, slander, defamation, wrongful termination, discrimination, environmental or records law violations of any kind, including but not limited to whistleblower reprisals, FAA EEO, OSHA, EPA, NLRB: please state or show, where, what actions, in what agencies and courts, with what results.
4. All PACE or other union grievances on safety issues, including all documents on all stages, including arbitration awards and transcripts.
5. All dispatch and crew scheduling recordings since January 1, 2002.
6. Please produce all search and finding aids, file indices, search terms, search memorandum and other documents allowing verification of the adequacy of Defendants' search for the foregoing documents.

As the parties mutually agreed to revise these requests to reflect the 26 categories of documents that were listed in the Complainant's Motion, some of which have been mooted by the dismissal of the Complainant's Sarbanes-Oxley claim, and the Respondent in fact provided documents in response to some, but not all of these 26 categories, it is entirely unclear what documents the Complainant thinks the Respondent should be compelled to produce.

The Complainant argues that there is no privilege that applies to any of the requested documents, and suggests that the crime/fraud exception invalidates any attorney client privilege. However, the Respondents have provided the Complainant with a privilege log which describes the date, author, recipient, and general description of each document withheld on the grounds of attorney/client or work/product privilege. The Complainant has not identified a single document that arguably falls outside these privileges, much less established why the privileges do not apply. Nor is there a shred of evidence to suggest that these privileges are being used to further illegal or fraudulent behavior, as claimed by the Complainant.

In sum, the Complainant's motions are a mishmash of generalizations and misleading statements that do not shed any light on which specific interrogatories and document requests are in dispute, the Respondent's response, and why the Complainant believes that the response is inadequate. Indeed, despite the Complainant's claims of "stonewalling" and "massive resistance," it appears that the Respondent has made substantial efforts to comply with the Complainant's discovery requests, and I find her claims to be inaccurate and deliberately misleading. As the Complainant has not articulated specific discovery disputes that require resolution, there is no basis for an order to compel.

## **CONCLUSION**

Accordingly, based on the above, the Complainant's Motions to Compel Responses to interrogatories and document requests are DENIED.

SO ORDERED.

A

LINDA S. CHAPMAN  
Administrative Law Judge